United Nations A/HRC/37/51

General Assembly

Distr.: General
16 January 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February – 23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the situation of human rights defenders

Note by the Secretariat

In the present report, prepared pursuant to General Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18, the Special Rapporteur on the situation of human rights defenders, Michel Forst, reviews the overall situation of persons acting to defend the rights of all people on the move. The Special Rapporteur aims to draw attention to the difficult situation of those who act in solidarity with people on the move and who seek to promote and to strive for the protection of their rights. He calls upon all States and other actors to protect and promote the rights of defenders of people on the move and to address the challenges that they face.

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I. Introduction

1. Just over two years ago, the body of a three-year old boy washed ashore a beach near Bodrum, Turkey. The boy's family had been fleeing the bloody armed conflict in the Syrian Arab Republic, and the little boy had drowned as they sought safety. The image of the lifeless body of Alan Kurdi galvanized popular opinion around the world, leading to demonstrations, and culminated in September 2016 in the renewal of the commitment of the international community to people on the move in the New York Declaration for Refugees and Migrants, adopted by the General Assembly in its resolution 71/1. Despite this renewed commitment, however, individuals, groups and communities defending the rights of people on the move have faced immense challenges. Defenders of people on the move face unprecedented restrictions, including threats and violence, denunciation in public discourse, and criminalization. More specifically, defenders who have taken to sea to rescue other people on the move have been arrested, had their boats seized and been accused of smuggling. The right of persons on the move to defend their own rights is even more restricted. Protests by those fleeing the Syrian Arab Republic about the conditions of their reception – conditions which often prompt dangerous onward movement – have been met with media indifference and police violence. Such a hostile environment silences the voices of those that would seek to keep alive the memory of Alan Kurdi and others that have died while moving across borders, and ensures that the bodies of people on the move will continue to be washed ashore, found in unmarked graves, or simply disappear in unforgiveable numbers.

2. In his report submitted to the Human Rights Council at its thirty-fourth session (A/HRC/34/52), the Special Rapporteur pointed out his intention to review the situation of persons acting to defend the rights of migrants. The present report goes beyond the situation of persons acting to defend the rights of migrants to review the broader situation of persons acting to defend the rights of all people on the move. The Special Rapporteur has come to recognize that the narrow categories of "migrant" and "refugee", and the silos of policy and activism that they perpetuate, are part of the problem facing defenders in this area. Rather than working from existing categories, in accordance with the practice of actors ranging from United Nations agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), to civil society organizations, such as Amnesty International to academic and legal commentators, the Special Rapporteur will adopt a category of individuals and communities defined by their shared experience: "people on the move".

3. In the report, the Special Rapporteur intends to draw attention to the difficult situation of those who act in solidarity with people on the move and who seek to promote and to strive for the protection and realization of their human rights. These defenders, many of whom are themselves people on the move, face a constellation of challenges, arising from both some of the disturbing features of global migration policy and the general trend towards the closing of civic space to human rights defenders. Importantly, many human rights defenders become people on the move in response to the risks they face arising from their human rights advocacy; they move in order to avoid threats and violence by the perpetrators of human rights violations that they oppose. In entering exile, they often continue with great difficulty their defence of human rights, and may turn their attention to the defence of their own rights in exile and the rights of other people on the move. Meanwhile, their allies and supporters face challenges of their own, arising out of the geographic location of people on the move, and the increasing criminalization and stigmatization of both people on the move and their defenders. The rise of non-State actors in migration processes also creates additional risks for defenders of people on the move.

4. In such a context, as the Special Rapporteur on the situation of human rights defenders, the mandate holder calls upon all States and other actors to protect and promote the rights of defenders of people on the move and to address the challenges that they face in their exercise of their fundamental right to promote and protect the universally recognized human rights and fundamental freedoms of people on the move. The Special Rapporteur hopes that the present report will guide all stakeholders in their efforts to implement the

important objective, while recalling that empowering defenders of people on the move is crucial to the prevention of further tragedy.

II. Methodology

5. The present report draws from primary and secondary sources of information. It is informed by a series of consultations with a wide range of stakeholders, including States, national human rights institutions, international experts, human rights defenders and people on the move. The Special Rapporteur conducted a multilingual global survey in November and December 2017 seeking input from all stakeholders. Sixty-one stakeholders, with experience in 48 States, responded to the survey. In November 2017, the Special Rapporteur hosted a meeting at the University of York attended by more than two dozen human rights defenders and international experts with experiences and expertise from around the world. The report also draws upon a wealth of literature concerning defenders of people on the move from a range of sources, including civil society and States, and from within the United Nations system.

6. The Special Rapporteur also draws upon his own experience in receiving communications from human rights defenders at risk working on people on the move and meeting with human rights defenders at risk during his numerous travels and other meetings. In the period between June 2015 and May 2017, the mandate received a relatively small number of submissions concerning defenders of people on the move: nearly 15 of 472 communications sent during that period were issued jointly with the Special Rapporteur on the rights of migrants. This number is representative of longer-term underrepresentation of defenders of people on the move in communications. Working with the Special Rapporteur on the rights of migrants, the Special Rapporteur intends to investigate further the reasons underlying this low rate, and to develop methodologies to better identify and increase the number of communications concerning defenders of people on the move in the coming months. In researching and drafting the present report, the Special Rapporteur has paid particular attention to the views and situation of women human rights defenders.

7. The Special Rapporteur expresses his gratitude to the many human rights defenders that took extraordinary risks to share their testimonies for the report. He is also grateful to the Special Rapporteur on the rights of migrants, who provided valuable input. He thanks States and national human rights institutions for their submissions, and the Centre for Applied Human Rights, University of York, for the assistance and instrumental support in preparing the report.

III. Definition and normative framework

8. All people have human rights. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders)[1] makes no distinction based on nationality or immigration status: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels." Similarly, the international instruments that set out international and regional human rights regimes extend their protections to all individuals within the jurisdiction of a State, regardless of whether they are a national or non-national, regardless of how far they are from their place of birth.

[1] General Assembly resolution 53/144, annex.

A. Definition of people on the move

9. The term "people on the move" is used to capture the diverse populations and circumstances of individuals and communities that find themselves in new locations. Sometimes movement has been voluntary, in search of new economic opportunities or new social horizons; at other times, movement has been forced as a result of armed conflict, discrimination or human rights violations. In reality, the distinction between voluntary and forced movement is blurred and challenged by the multiplicity of reasons for movement. Groups and communities of people on the move are further complicated by a variety of protection profiles, their reasons for moving and needs.

10. In the present report, the Special Rapporteur uses the term "people on the move" broadly to cover both individuals and communities who have moved and are already recognized in international law and policy, as well as those who find themselves in the same situation but exist outside formally recognized categories. People on the move include refugees, internal and international migrants, internally displaced persons, victims of smuggling and trafficking, and the stateless. They also include persons seeking to reunite with family members, displaced indigenous communities seeking to return to their ancestral homes, and all others who find themselves for whatever reason somewhere new. People on the move may be migrating as part of a well-established and predictable pattern, such as seasonal agricultural labour, or because of an emerging and dynamic phenomenon, such as climate change.

11. People on the move also fall within many other categories; they can be children, mothers, workers, or persons with a disability. Some of these categories can bring with them further legal protections. However, these categories, including gender, can also intersect to isolate and create further vulnerabilities for individuals, groups and communities. Nonetheless, all people on the move share a common situation: they find themselves individually and collectively far away from their previous homes in new communities on the other side of legal, economic, social or political boundaries. People on the move is a diverse category of individuals and communities united by their shared experience of movement.

B. Human rights defenders of people on the move

12. The term "human rights defender" refers to individuals or groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights. Defenders are above all identified by what they do, and are characterized through their actions to protect human rights. Their right to exercise such fundamental rights and freedoms as those to peaceful assembly and association, participation in the affairs of society and freedom of expression and opinion, are firmly anchored in the international system of human rights. The international bill of rights[2] makes no distinction with respect to these rights on the basis of nationality or place of birth.[3]

13. The Special Rapporteur has decided to adopt a broad and inclusive definition of defenders working on people on the move to include affected communities and individuals, lawyers, judges and academics. They may also be government officials, civil servants, members of the private sector (including private sector employees increasingly employed by States to address the situation of people on the move) and whistle-blowers. Human rights defenders working on people on the move are often ordinary people who have themselves been displaced or have chosen to migrate, or who have witnessed the suffering

[2] Comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the protocols thereto, and the International Covenant on Economic, Social and Cultural Rights.

[3] Only three rights in the international bill of rights differentiate on the basis of nationality: the right to participate in political affairs and to vote, the freedom of movement; and, in some circumstances, economic rights. All of these differentiations are to be interpreted narrowly. See for example General Assembly resolution 40/144.

of people on the move; they may not even be aware that they are acting as human rights defenders. What this broad and diverse group has in common is the exercise of peaceful activities to address the situation of people on the move.

14. While States have the sovereign right to determine their migration policies, this right is constrained by the obligations voluntarily assumed by States under international human rights law. Although a diverse array of international agreements apply to certain, widely recognized groups, such as refugees and migrant workers, all people on the move and their allies share the same universal human rights articulated in the Universal Declaration of Human Rights. International human rights law prohibits discrimination on the basis of nationality; the treaty bodies responsible for the interpretation and supervision of the core instruments of the international human rights regime have issued clear guidance that the rights articulated in the treaties apply without discrimination between citizens and non-citizens and, by extension, should be enjoyed by all people on the move. Where limitations are allowed to the rights of people on the move, international human rights law requires that such restrictions be in response to a pressing public or social need, pursue a legitimate aim, and be proportionate to that aim. All too often, restrictions on the rights of people on the move to defend their rights, or on human rights defenders defending their rights, fail one or more of these requirements.

15. Some people on the move also benefit from rights accorded by virtue of the cause of their movement or other categories into which they fall. The former includes refugees, stateless persons, migrant workers (and family members), internally displaced persons and victims of smuggling or trafficking. The latter categories include women, children, racial groups and persons with a disability. These rights are articulated in international and regional treaties, and are also increasingly recognized as customary international law.

16. While many of the standards relative to the rights of people on the move and defenders of people on the move are international, important work has been done by regional organizations. Regional treaties have frequently expanded the protections offered by international instruments, notably with respect to refugees and internally displaced persons. In addition, regional human rights institutions have played an important role in articulating developments in customary international law. In this respect, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have issued landmark decisions with respect to the rights of undocumented migrants. The International Labour Organization has also played a key role in developing international instruments addressing particular sectors of employment in which migrant labour is frequently exploited, most recently in its Domestic Workers Convention (2011) (No. 189), and in articulating global standards on the rights of irregular migrants.

17. As in international human rights law more generally, the rights outlined in the Declaration on Human Rights Defenders, including the core freedoms of assembly, expression and association, similarly apply to all individuals. In the first paragraph, the Declaration reaffirms the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world. Under the Declaration, human rights defenders of all backgrounds and working on all issues have the right freely to discuss and participate in the negotiation of emerging frameworks and to interact with national and international human rights institutions. International human rights law requires States to respect, protect and fulfil the rights of defenders. The importance of the right to defend the human rights of people on the move was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must "respect and support the activities of human rights defenders who promote and protect the human rights of migrants".

18. An important recent development in the normative framework concerning people on the move is the aforementioned New York Declaration. The international community is currently negotiating two global compacts, on refugees and on safe, orderly and regular migration. These international instruments will seek to consolidate international obligations to people on the move and to develop more comprehensive, coordinated responses to the challenges that mass migration poses for both States and people on the move.

Unfortunately, human rights defenders have not figured enough in the discussions with respect to these instruments, nor with regard to the associated comprehensive response framework, action plans or monitoring mechanisms. Defenders are an essential demonstration of the solidarity with people on the move, as proclaimed in the New York Declaration. The invitation made in the New York Declaration to civil society, including refugee and migrant organizations, to participate in multi-stakeholder alliances to support efforts to implement the commitments being made should be taken up both by defenders of people on the move and by States and other stakeholders in the ongoing negotiations.

IV. Background and hostile environment

19. The number of people on the move is increasing to record levels and shows no sign of decreasing. While people on the move bring social and economic resources and new ideas to the communities they join, they are not always welcomed. Furthermore, defenders of people on the move work in an increasingly hostile environment marked by the closing of civic space generally, and attacks and threats to human rights defenders more specifically. In such an environment, defenders of people on the move face particular challenges owing to the nature of both the issues they champion and the activities they undertake in doing so.

A. Background

20. The current era has been described as the "age of migration" by a range of actors, from academic commentators to the Secretary-General. While it is true that the history of humanity is rooted in migration, the impact of people of the move on both the international community and local communities around the world has reached unprecedented levels. The displacement within and flowing out of the Syrian Arab Republic has refocused the international community's attention on the predicament of refugees and other displaced persons, the global numbers of which are now at levels not seen since the end of the Second World War. The forcibly displaced represent, however, only a fraction of the around 250 million peopple living in a country other than the one of their birth, a number that has risen by more than 40 per cent since 2000. Migration affects all parts of the world and is increasingly witnessed inside States in all regions of the world.

21. When international migrants are combined with internal migrants (people who remain within their country of birth but live away from their region of birth), there are currently more than one billion people on the move. Some States, such as Colombia, which counted more than 7 million internally displaced persons even after the recent peace accord, face protracted situations of internal displacement. Other States, such as China, currently undergoing significant development and urbanization trends, face growing numbers of internal migrants. The number of internal migrants is also increasing, as many societies undertake their own development and urbanization. Communities that were considered deeply rooted only a few decades ago have been displaced to new locations as a result of large development projects, environmental damage and climate change. With one seventh of the world population currently on the move, the experience of migration is becoming commonplace and having a deep and lasting effect on the organization of society and culture.[4]

22. Unfortunately, the response to migration is not always positive. All too frequently, entrenched interests use migration as a means to reinforce their control by fomenting distrust of newcomers and xenophobic attitudes. This can increase the risk of sexual and gender-based violence faced by women people on the move (and women human rights defenders). Political leaders scapegoat people on the move and blame them for economic and social problems that are much more deep rooted. Xenophobic violence can be

[4] International Organization for Migration, "Migration in the world" (available from www.iom.sk/en/about-migration/migration-in-the-world).

instrumentally deployed to influence electoral outcomes. The media too often simply reproduce and amplify these overly simplistic and acutely inaccurate narratives about people on the move. Some States try to restrict the availability of migration through the imposition of registration requirements, the restriction of benefits for newcomers, and border controls, including stringent local residency requirements and international visa regimes.

B. Hostile environment

23. The challenges that defenders of people on the move face arise within a broader phenomenon of shrinking space for civil society. Human rights defenders face an increasingly complex and coordinated web of restrictions on their activities that represent an existential threat to free and open societies. Although each attack on a defender is made within a specific context, and can and should receive discrete attention, the Special Rapporteur is now convinced that such incidents are not isolated acts, but rather betray the broader, concerted nature of attacks against those who try to embody the ideal of the Universal Declaration of Human Rights of creating a world free from fear and want. Patterns in tactics are visible, ranging from copy-cat legislation restricting the freedom of non-governmental organizations to restrictions on access to resources, to threats and violent repercussions against defenders whose activities threaten vested interests. Moreover, the international community has failed to respond to the concerns of the Special Rapporteur on this point, which have been repeatedly expressed since the establishment of the mandate.

24. Certain features of the shrinking civil society space pose particularly large challenges for people on the move and defenders working their behalf. The characterization of defenders as "foreign agents", for example, plays into the discourse that people on the move and their allies represent a seditious threat. Similarly, foreign funding rules often restrict people on the move of access to their own or other resources abroad. Many States complain about the inequitable "burden" created by people on the move, while simultaneously restricting access to funding from abroad, which could be used by defenders to better mitigate some of the challenges faced by both people on the move and host communities.

25. Nor should the discussion of shrinking civil society space obscure the reality that the repression of civil society, and of human rights defenders, is not uniform. Some defenders have faced long-standing difficulties and dangers, long predating the recent global trend. In the context of the present report, people on the move as defenders of their own rights have long been denied a right to any speaking position, excluded from political discourse as outsiders and non-citizens. They continue to face threats and violence far in excess of that faced by their supporters and allies. Civil society space has not only shrunk but is nearly closed for people on the move seeking to defend their rights.

V. Root causes of violations

26. Beyond the shrinking civil society space, there is a constellation of discrete economic, social and political phenomena that underpin the challenges that defenders of people on the move face. The mistreatment of these defenders is inseparable from the commodification of the people whose rights they champion, the shift in public discourse towards a securitized, rather than humanitarian, approach to people on the move, and the repressive utilization of citizenship and status to separate people on the move from the rights to which they are entitled.

A. Commodification of migrants

27. Migrant labour is an economic resource, both of receiving jurisdictions through the expansion of the labour market and of sending jurisdictions through the receipt of valuable remittances. The nexus between migration and development is increasingly recognized by the international community. The World Bank, other international financial institutions and

international intergovernmental processes, such as the Global Forum on Development and Migration, actively engage in efforts to promote labour export and migrant guest worker programmes as a means of development. Viewing people on the move as an economic issue has led to a series of policies and practices that too often treat them as silent commodities to be exploited in the national labour market. People on the move are incorporated into the international labour market in a restricted manner; their capacity to exercise their labour power may be more fully engaged, as they escape unemployment or underemployment in their home regions or countries, but the terms of this engagement are circumscribed. They are, in effect, incorporated into the economy on terms not dissimilar to other inputs in the production process; their capacity to exercise their labour power is no more than a commodity.

28. An important consequence of this commodification is precariousness: policies targeting people on the move often deliberately leave them with only a temporary or uncertain status. They face conditions of uncertainty, disempowerment, vulnerability and insufficiency. They are excluded from the hard-won protections of labour and social rights because of their lack of belonging. Immigration regimes often compound and perpetuate their precarious situation; for example, the immigration status of a migrant worker is often linked to his or her employment with a single individual employer, needs to be regularly reviewed, or is made contingent upon the views of the employer as to whether that person has been a "good" worker. Receiving societies often capitalize on or engineer the fear that people on the move have of being detected, detained or deported in order to ensure that they will not complain, protest or mobilize. People on the move with an irregular status are often trapped in such a condition by the lack of opportunities to regularize it, leading to heightened vulnerability. The prolonged precariousness experienced by many people on the move poses obstacles both for them, when they defend their own rights, and for traditional defenders acting on their behalf, such as trade unions.

B. Securitization of migration

29. Migration is increasingly viewed through the lens of national security. References in discourse to "crisis" and existential threats to the community predispose States and other actors to responding with urgent or extraordinary measures. The characterization of people on the move as a security concern is a political act and serves particular interests, including by affording political legitimacy to unusual actions by the State and supporting partisan political agendas – the irony being that many individuals become people on the move in response to threats to their own security, including economic poverty, political repression and armed conflict. Some States have deliberately pursued the securitization of migration to further their own political ends: for example, the Government of Hungary prosecuted a migrant from the Syrian Arab Republic for terrorism for using a megaphone to ask the police to communicate with refugees and migrants at the border, and after throwing three solid objects at them. The prosecution both scapegoated an individual for a much larger issue and sought to depict as dangerous not only people on the move but also those who seek to defend their rights.

30. It is too often forgotten that these responses, and the related phenomena of nationalism and xenophobia, can themselves be seen as threats to the State, its interests and its values. The protection of the rights of people on the move can be an expression of core national values, a demonstration of solidarity with allies and a response to counter destructive extremist politics; thus, while security rhetoric can be used to justify a stricter migration policy, it can also be used to legitimize extraordinary actions in favour of migrants.

C. Citizenship

31. Even though all human beings have human rights, some States (and private actors) all too often discriminate between citizens and non-citizens; public discourse and political debates reproduce this distinction, differentiating between deserving "locals" and undeserving "newcomers". The international human rights movement (and often its

national tributaries) traces its roots to national struggles for independence and self-determination. Despite declarations of universality, it has historically found traction in discourse that links rights with citizenship and belonging. While such rhetoric can build support for human rights, it does so at the cost of the rights of non-nationals and other people on the move who struggle to claim belonging. Furthermore, citizenship laws are, by their nature, frequently politicized and often drafted by dominant groups. As such, they are inherently problematic as a basis for denying the rights of non-dominant groups.

32. As many have noted, the idea of citizenship has become in practice a "vast and proliferating bureaucracy from which flow categories of people marginalized by, excluded or disqualified from citizenship and the rights which flow from this status".[5] An unforgiving gap has developed between the ideal of deepening democracy through citizenship and the abjection of "illegal" populations from the rights and protections of citizenship through the enforcement of often brutal and inhumane immigration control. Paradoxically, at a time when citizenship is becoming a tool used to control and exploit people on the move, financial capital moves almost without restriction. Nonetheless, full citizenship remains the main goal of much activism by and for people on the move. This can inadvertently reinforce the correlation between citizens and non-citizens. Some defenders of people on the move, notably the *sans papiers* movement, follow a contrary strategy: engaging in claims for citizenship while also critically questioning citizenship as a system of governance and control. The struggles of defenders of people on the move cannot and should not be reduced to advocacy for citizenship, but understood separately as critiquing the ethical foundations of citizenship.

VI. People on the move as human rights defenders

33. People on the move can themselves be human rights defenders. In some instances, their journeys result from threats and risks that arise from their activities as human rights defenders at home. In other cases, people already on the move become human rights defenders after having suffered or witnessed human rights violations. In either case, people on the move who are defenders face particular challenges as a result of their displacement and the restrictions and vulnerability that they endure as people on the move.

A. Displacement due to violations of the rights of defenders

34. The violation of human rights, ranging from the active repression of political opponents to the more general denial of economic opportunities, is a frequent cause of migration. Like the members of society within which they operate, human rights defenders are subject to these violations, and in many cases they subsequently become people on the move in response to them. More bluntly, some defenders are forced to flee because of threats and violence.

35. As the Special Rapporteur noted in his previous report (A/HRC/31/55), civil society and State relocation initiatives have helped defenders to remove themselves from immediate danger and to have some time for rest and respite. In some cases, defenders find safety in another location within their own country; at other times, they have to seek refuge abroad. Relocation initiatives may take different forms: from emergency shelter in safe houses to temporary hosting arrangements with sympathetic civil society organizations, shelter city programmes, through to the provision of scholarships and fellowships at universities. In all such cases, human rights defenders become people on the move in order to find protection. Such initiatives need greater support and good practices should be identified and promoted, particularly with respect to the psychosocial well-being of defenders in such schemes and managing transition, return or more permanent exile. States, UNHCR and other actors should ensure that their actions and policies support, rather than undermine, such a bottom-up approach to protection by civil society itself.

[5] Imogen Tyler, "Designed to fail: A biopolitics of British citizenship", *Citizenship Studies*, vol. 14, No. 1, pp. 61-74.

36. Becoming a forced migrant is a choice embraced by few, including human rights defenders at risk. As one defender consulted by the Special Rapporteur noted, "I do not like the idea of being a refugee. I do not want to leave the country because I wanted to make it better." Defenders, like others, often see displacement as a last resort, and unfortunately as a pathway to poverty, insecurity and irrelevance. Human rights movements struggle to find a place for the voices of the displaced, and colleagues who remain too often view those who seek refuge abroad with disdain and suspicion. Even in exile, threats may persist from home governments and other agents of persecution; family, friends and colleagues who remain can all come under pressure.

37. Protection regimes for people on the move, including the protection offered by the international refugee regime, are often too uncertain and individualized, afflicting defenders with lengthy periods of insecurity and failing to accommodate the broader needs of their communities. Defenders in exile often take on low-skill jobs in an effort to reconstruct their lives; often this also has the consequence of forcing them to abandon their human rights. When such circumstances unfold, it is not only a personal defeat for defenders but for the entire human rights movement, given that their valuable knowledge, resources and advocacy are lost. Although national and regional guidelines on the protection of human rights defenders often offer the facilitation of international protection abroad for defenders at risk, in practice these promises are slow and overly discretionary. State visa regimes also pose obstacles to civil society temporary international relocation initiatives. States may impose blanket bans on visas for particular nationalities or discourage civil society institutions from participating in such initiatives, by, for example, requiring lengthy processes that make relocation through such an initiative an impractical response to an immediate threat, or charging high application costs for visas. Visa policies may also discriminate against women human rights defenders seeking temporary relocation with their families.

38. Too often, human rights defenders who flee into exile are denied registration by UNHCR and States for months, years or even indefinitely, and face decision-makers who are unfamiliar with the basis of their claim as a human rights defender at risk. Decision-makers almost invariably lack specific guidance and training on how to respond to requests for protection from human rights defenders at risk. Only a handful of reported asylum decisions mention defenders; reference to the situation of human rights defenders in country of origin material used in asylum decisions is haphazard, and UNHCR has not issued any global guidance on protection by the international refugee regime of human rights defenders at risk. The uncertainty created by both the lack of status and the process of refugee status determination can be mitigated by a commitment by UNHCR and States to prompt registration followed up by fair and accurate decision-making with respect to status.

B. Continuing human rights activities after displacement

39. Human rights defenders who become people on the move face challenges and threats to their continued agency and ability to do human rights work. These include heightened vulnerability, restrictions on their rights as human rights defenders and, in some cases, heightened risks even in exile.

1. Vulnerability as people on the move

40. People on the move face many restrictions. They often only possess temporary status or are forced to live with an irregular status, under constant threat of arrest, detention and deportation. They also frequently face restrictions in the employment they may seek and the locations where they may live and to which they may travel. Cultural and linguistic differences may separate them from the host community, and they may lack social capital and networks in their new home. All of these factors make continuing to work as a defender in exile extremely difficult; for example, defenders who have fled from Central Africa to Uganda have reported feeling isolated from both human rights defenders and refugee protection mechanisms because they are from a different country or region of origin, and because of their lack of fluency in the local language.

41. People on the move, particularly those with a precarious status (such as temporary migrant workers or asylum seekers), usually do not protest or mobilize to challenge the exploitation that they endure, as they fear retaliation from humanitarian agencies, recruitment agents, employers and the State; they cannot afford being refused recognition as a refugee, fired, sent back home or barred from future work abroad, as this would mark the end of the migration project in which they have already invested so much. Defenders who have fled face a particular risk of refoulement, as their country of origin may seek the return of dissidents, either formally through diplomatic pressure or surreptitiously through the overseas actions of State security agents.

42. Defenders who continue their activities in exile face a chronic lack of protection. State police and officials can project the same xenophobia and hostility to people on the move that plagues host communities; defenders in exile may lack social networks and capital and local knowledge about policies and practices to ensure that local authorities offer them protection. UNHCR and humanitarian organizations, which are often the target of the advocacy of such defenders, can see them at best as being of relative significance and at worst, as undeserving of status or services. Although the protection activities of UNHCR are overstretched, defenders in exile can face particular problems in their access to protection owing to the belief that their risk is less worthy of a response because it is either self-inflicted or self-interested. Women human rights defenders are particularly vulnerable to lack of protection.

43. Many such people living in chronic insecurity are, as a result, unwilling to speak out about their individual circumstances, although the media's constant need for a "human story" will rarely them publicize an issue without a personal account at its centre. The outcome of this is the further stifling of public discussion regarding the treatment of people on the move. The vulnerabilities of defenders in exile can lead to them losing control of their stories, even when working with sympathetic journalists or local human rights defenders. The conditions they face, particularly if in detention, can deprive them of their dignity and bias popular discussion of their situation. As one defender working in extremely difficult circumstances informed the Special Rapporteur, "They have tried to suppress me because they know that if I were seen in this light, things would be different… If I had been granted the respect I deserve from others at an earlier stage, I would've been able to resist a lot stronger, I would've been able to fight a lot fiercer." More broadly, people on the move are often insufficiently involved in deciding which stories should be published, which narratives should be presented and which images should be used. Defenders of people on the move need to be willing to discuss the ethics of their practice, and to listen to and support the voices of defenders in exile.

2. Restrictions on the rights of people on the move

44. The ability of people on the move to protest through free expression, association or peaceful assembly is too restricted. For example, under s. 7 of Singapore's recently revised Public Order Act, a permit for public assembly may be refused if it involves the participation of any individual who is not a citizen of Singapore. This has forced organisers to establish what are in effect immigration checkpoints at the entrances to spaces of protest and has silenced the voices of the quarter of the residents of Singapore who are not citizens on issues that pertain to their daily life in that country. To be clear, there is no basis in international law for completely divesting non-citizens of their assembly rights.

45. Often local labour laws fail to recognise the claims of people on the move, particularly when they are irregular, and take so long to resolve that people on the move are forced to agree to settlements or withdraw complaints. In some countries, contrary to international labour standards, collective bargaining and union membership is effectively restricted to citizens.

46. People on the move as human rights defenders often face extra barriers to participating in international discussions and consultations. The continuation of defender activities while in exile is tied to their continued membership and participation in regional and international movements or organizations. However, full participation in meetings and advocacy opportunities, including before the Human Rights Council, may be impossible

due to visa restrictions or renewal of expired travel documents. Human rights defenders in exile are also disproportionately affected by exit controls in their country of residence which may result in sanctions if any irregular status is discovered or prevent their return.

3. Particular vulnerability of some defenders in exile

47. Some defenders who become people on the move face heightened risk because of an aspect of their identity or the issues on which they work. Women human rights defenders who are forced to flee often face a dilemma: they face heightened vulnerability and social stigma if they flee alone but flight into exile with their children may be even more difficult and will almost certainly curtail their ability to continue their human rights activities. LGBTI defenders may also face particular vulnerability in exile, particularly in refugee camp settings where their sexual orientation and gender identity brings with it social stigma and risk and the general lack of privacy makes it impossible to maintain secrecy. State officials, humanitarian organisations and even defenders in the new host community may be indifferent or actively hostile to the particular vulnerabilities of these defenders who become people on the move.

48. The expansive use of cessation provisions for refugee protection by some States paralyses human rights defenders in exile and prevents them from continuing their activities. Such policies undermine the ability of defenders in exile and create needless obstacles to their work for the betterment of their communities. Human rights defenders who protest their treatment or the treatment of other people on the move often face reprisals including the loss of status, expulsion from refugee camps and refusal of access to resettlement.

49. Some people on the move are particularly vulnerable due to their circumstances in their new place of residence. Live-in domestic workers, who in many places are exclusively drawn from the ranks of international migrants, face particular vulnerability to monitoring, control and coercion predicated on their isolation from each other, heightened dependence on their employer, the private location of their work and interrelated restrictions on their freedom of movement. Moreover, migrant domestic workers who seek to defend their rights risk reprisals that can instantly strip them of status and simultaneously render them homeless.

VII. Defending the rights of people on the move

50. People on the move have many allies, both old and new. With the surge in the number of people on the move, a growing number of defenders are seeking to address the human rights violations they face. Unfortunately, defenders of people on the move also face a number of barriers: difficulty in access to people on the move, and the sites of human rights violations against them; the criminalization and stigmatization of their work, and of people on the move; and the growing involvement of non-State actors in violations against people on the move.

A. Lack of access to people on the move

51. People on the move are often forced to confront peril when they transit militarized border zones or cross dangerous seas. More than 5,000 people on the move are reported to have died in the process of migration towards an international destination over the past year. Unfortunately, defenders who seek to assist people on the move in such spaces often face dangers themselves. Some have been charged with smuggling while trying to rescue refugees on the high seas, or have been subjected to a growing number of regulatory restrictions on their actions.

52. Access to people on the move in border areas is often controlled by military authorities, who simultaneously are unable to meet the needs of people on the move in these areas and restrict access and humanitarian assistance to them. In a number of countries, the authorities have ordered soup kitchens to be closed, rescue boats to be

impounded and temporary accommodation to be demolished. They have forced defenders to be accompanied in their activities in border areas by police officers, deliberately blurring the line between the State and civil society and undermining the perceived neutrality of defenders. Defenders seeking to provide humanitarian assistance to people on the move without State permission within these spaces are subject to criminalization (despite the suffering that this generates) and the clear protections that international human rights law offers such activities. In Italy, for example, some defenders working in border areas have been issued a *foglio di via*, an order to leave the town and not to return there for a specified period.

53. Even inside a State, people on the move are often confined to isolated locations ranging from refugee camps to construction sites, labour camps and agricultural plantations. Many of these are located in remote locations difficult to reach. Information about whom is being detained where is often kept from defenders, or provided when it is already out of date. Employers, private land owners and camp management authorities can restrict access to these locations. Asylum seekers in need of support from the State may be particularly vulnerable to policies of dispersal. Even where access is allowed, defenders working in such locations can be subject to intense surveillance, while people on the move working with defenders have to face suspicion and reprisals. All too frequently, places of detention are deliberately located in this way so as to increase the precariousness of people on the move and to isolate them from communities offering support.[6] At the extreme, a place of detention can (as in the case of Australia) be on the high seas, on a remote offshore island or even outside the territory of the State. Judicial proceedings are sometimes even moved to within detention centres, further frustrating access by human rights defenders, including those seeking to provide legal counsel and representation.

B. Criminalization and stigmatization of defenders of people on the move

54. Defenders working on issues faced by people on the move are often subject to criminalization and to restrictions above and beyond those usually faced by civil society more generally. States have expanded the troubling practice of requiring registration with the police and supervision and control by State authorities when working in particular geographic areas hosting large numbers of people on the move or close to border crossings. Even outside of these areas, defenders providing assistance to and expressing solidarity with people on the move have faced criminalization. While criminalization is often legislated nationally, it can also be the product of local bylaws that seek to prevent defenders from providing support to people on the move or otherwise interfere in the activities of defenders.

55. The irregular status of some people on the move may cause defenders working with them to be charged with "harbouring" irregular people or otherwise facilitating their irregular presence. Some defenders (such as Helena Maleno Garzón), have even been accused of the international crime of trafficking as a result of their advocacy against illegal practices, such as "hot returns", and solidarity with people on the move.[7] The simple act of giving tea and biscuits to an irregular migrant has triggered criminal prosecution. Such prosecutions have a chilling effect, making mainstream civil society organizations and private individuals more hesitant to engage with people on the move or to take action in relation to the challenges they face. In some States, severe penalties have been legislatively mandated for whistle-blowers who reveal information about the mistreatment of people on the move. These laws place individuals in conflict with their own personal and professional ethics and are in clear violation of the freedom of expression guaranteed by international human rights law.

[6] Lauren Martin, "Noncitizen detention: spatial strategies of migrant precarity in US immigration and border control", *Annales de géographie*, vol. 702-703, No. 2 (2015), pp. 231-247.

[7] International Federation for Human Rights (FIDH), #DefendingMaleno, press release, 4 December 2017.

56. Criminalization of defenders of people on the move reinforces the social stigma that people on the move and their allies face. One defender in Italy noted that "criminalizing solidarity threatens to promote, in public opinion and among political forces, an indifferent attitude towards migrants and refugees, or even overtly racist and nationalist positions." It seeks to delegitimize the work of defenders and threatens their activities by discouraging private donors and volunteers. In such a hostile environment, it is important that funders recognize the challenges that defenders face, and adopt flexible and appropriate funding mechanisms. Often as part of policies directed at deterring people on the move, States have cut government funding for civil society working with people on the move, most notably organizations working against racism and xenophobia and legal centres supporting people on the move in claiming their rights.

57. In some locations, the stigma associated with people on the move has been actively countered by interventions from locally respected institutions, including religious figures and organizations. Religious leaders around the world have condemned the rise in xenophobia and urged followers to provide assistance to people on the move without prejudice, regardless of their cultural, religious and ethnic backgrounds. Local religious leaders have welcomed people on the move and publically demonstrated support of their journeys to safety. A striking example of this is along the southern border of Mexico, where the assistance provided by the Catholic Church to migrants both responds to their humanitarian needs and mitigates the marginalization and stigma faced by the recipients of their assistance. In Australia, the "Let them stay" campaign represented a coalition that drew upon the broad-based community membership and local facilities of religious organizations.

58. As irregular and vulnerable migrants are not part of the local polity, by and large they have no voice in the political arena, and rarely dare to protest. In the face of the increasingly strident anti-immigration sentiment in political discourse, it is often the judiciary that can best protect migrants' rights. Access to justice becomes a key factor in imposing sanctions for human rights violations and reducing migrants' vulnerability.

C. Involvement of non-State actors

59. As with the rest of society, people on the move interact with private individuals and companies in a range of domains, from housing to employment, through to banking. These interactions can result in abuse, breaches of contract and exploitation, which further heighten the vulnerability of people on the move. International migration is in every sense a difficult undertaking; as a result, many people on the move often rely on smugglers to cross borders. Even regular migrant workers are often required to obtain visas through State-sanctioned private recruiters. People on the move often face challenges in seeking remedies to such mistreatment, particularly when the availability of the remedies is tied to having regular immigration status or a lengthy period of time to obtain it.

60. Defenders of people on the move may also face risks and exploitation as a result of the involvement of organized crime, for example, in the transportation of people on the move. The Mafia and other criminal networks have become involved in the exploitation of groups of people on the move, while defenders seeking to expose their criminal activities are left without adequate protection, especially when they themselves are people on the move. In Mexico, people on the move face violence, extortion and trafficking from criminal gangs: "Few make it to the border without having suffered any human rights abuse; many go missing on the way, never to be found again."[8] In Italy, people on the move who seek to resist human trafficking can be subject to horrendous abuse.[9] Traffickers have threatened and killed defenders seeking to expose their activities; victims of trafficking who do seek to expose or prosecute their traffickers face lengthy periods of detention in safe houses,

[8] Amnesty International, "Mexico's gruesome war against migrants", 21 August 2015.

[9] Lorenzo Tondo and Annie Kelly, "Raped, beaten, exploited: the 21st-century slavery propping up Sicilian farming", *Guardian*, 12 March 2017.

uncertain immigration status and threats against their family and community that prevent any return home.

61. Contractual relations with non-State actors can also restrict the rights of people on the move to defend their rights. Private employment contracts may prohibit people on the move from engaging in political activity, free expression or peaceful assembly. Although these contracts are private, the State has an important and pivotal role to play in prohibiting such restrictions by rejecting their validity as contractual terms under national law.

62. Non-State actors also have a growing role in the regulation of people on the move and the defenders who advocate on their behalf. States outsource some of their core functions with regard to migration, including the inspection of travel documents, the provision of social housing and, in some cases, the management of detention facilities. These practices expose people on the move and their allies to a range of new challenges and risks. Outsourcing often restricts the access of defenders to information insofar as non-State actors fall outside legislation and policies regulating freedom of information. The involvement of non-State actors may also limit the ability of defenders to seek redress through the courts. By removing the State from the situation, outsourcing removes the usual methods of accountability and advocacy for human rights defenders. Private actors have responded to advocacy by defenders of people on the move by filing defamation lawsuits that are, in effect, strategic litigation against public participation suits intended to censor, intimidate and silence critics.

VIII. Creating an enabling environment for defending the rights of people on the move

A. Conclusions

63. Defenders of people on the move seek to make concrete the commitments of the international community to people on the move. As noted in the report of the Secretary General on addressing large movements of refugees and migrants (A/70/59) (prior to the adoption of the New York Declaration), "there has been an outpouring of support from civil society, and in every region countless individuals have spontaneously welcomed new arrivals, often literally opening the doors of their homes to them. [...] These positive examples can serve as a basis for strengthened collective action." Although the number of people on the move is increasing, States too often remain hostile to movement across borders, whether internal or international. The hostility of States towards people on the move and their defenders is a result of the confluence of the desire to maximize economic development through the commodification of people on the move, the securitization of discussions of all types of migration, and the problematic role of citizenship in discourses on rights.

64. In a submission to the Special Rapporteur, the Government of Greece highlighted the importance of the situation of defenders of people on the move, given that, "in most cases, people on the move, having no vote or other means to make their voices heard, depend on advocates and defenders to a higher than normal degree to make their concerns known." Defenders of people on the move are also often less visible than other types of human rights defenders owing to a number of factors, including the location of their work and the fact that people on the move are themselves marginalized. Other identities or occupations that defenders have may prevent them from being seen as human rights defenders working with people on the move. They may see themselves as medical doctors or humanitarian workers, or as working within the refugee rights movement rather than as human rights defenders.

65. The challenges that defenders face cannot be separated from those confronting those whose rights they defend, not least because many of the latter are also the former. Just as people on the move too frequently face policies designed to create a hostile environment, so too do defenders acting in solidarity with and advocating for the rights of people on the move face a growing number of restrictions and controls.

These challenges dangerously reinforce each other, leading to a downward spiral of marginalization and the posing of ever greater obstacles to the effective exercise of their rights. Such restrictions and controls must be reconsidered in ongoing discussions on the rights of people on the move and sustainable approaches to migration. The role of human rights defenders advocating for the rights of people on the move must be a core element of renewed commitments to, and action plans and monitoring regimes for, people on the move.

B. Recommendations

66. **The Special Rapporteur recommends that States:**

(a) **Take all measures to protect the right to life, liberty and security of person of people on the move and those who defend their rights;**

(b) **Recognize publicly the important role played by defenders of people on the move and the legitimacy of their work; and condemn publicly all instances of violence, discrimination, intimidation or reprisals against them, and emphasize that such practices can never be justified;**

(c) **Enable people to promote and protect human rights regardless of their immigration status; in particular, people on the move and those who defend their rights should be able to exercise, inter alia, their right to freedom of information, freedom of expression, freedom of association and freedom of assembly;**

(d) **Ensure that perpetrators of crimes against people on the move and those who defend their rights – including employers, law enforcement officials, traffickers, and criminal gangs – are held accountable for their actions and brought to justice;**

(e) **In relation to the rescue of persons at sea specifically, observe legal provisions as contained, inter alia, in the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, and the Convention on the Law of the Sea; ensure that people are not criminalized for rescuing people at sea, and that masters of vessels sailing under their flag observe rules regarding rescue at sea; and allow vessels in distress to seek haven in their waters, granting those on board at least temporary refuge;**

(f) **Ensure that all human rights defenders in exile benefit from the prohibition of refoulement to persecution, as articulated in the Convention relating to the status of refugees and other international instruments and customary international law;**

(g) **Ensure that national protection mechanisms for human rights defenders at risk are accessible to defenders of people on the move, including by increasing training of staff involved in protection about and outreach to defenders of people on the move;**

(h) **Ensure that visa regimes and other policies and practices do not undermine temporary international relocation initiatives for human rights defenders, and more fully operationalize policies that provide for humanitarian visas for human rights defenders at risk;**

(i) **Ensure that people on the move and those who defend their rights have access to justice and to effective remedies through national courts, tribunals and dispute-settlement mechanisms, regardless of their immigration status; ensure that they are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations; and ensure they have the necessary support for pursuing remedies through effective access to justice in national courts, tribunals and dispute-settlement mechanisms, with the support of unions (where applicable), interpreters and legal assistance;**

(j) **Ensure that national law and administrative provisions and their application facilitate the work of all actors providing humanitarian assistance to and**

defending the human rights of people on the move, including by avoiding any criminalization, stigmatization, impediment, obstruction or restriction thereof (including in assistance provided by local authorities, such as regional or municipal bodies) that is contrary to international human rights law.

67. **States offering resettlement should recognize the importance of providing a durable solution to people on the move who suffer serious threat or imminent harm as a result of their defence of human rights by affording access to emergency resettlement and expanding the opportunities for their resettlement more generally.**

68. **The Special Rapporteur recommends that United Nations agencies, funds and programmes and related organizations, including the Human Rights Council, its special procedures, the United Nations Development Programme, UNCHR and the International Organization for Migration recognize publicly the important role played by defenders of people on the move and the legitimacy of their work.**

69. **The special procedures of the Human Rights Council should more closely monitor the concerns of people on the move, including by better tracking the number of communications received about their concerns.**

70. **UNHCR should establish guidelines on international protection recognizing how people on the move have the right to promote and protect their own rights and the rights of others, and ensure that UNHCR staff are appropriately trained on the guidelines and how these rights should be protected (including by being made aware of the Declaration on Human Rights Defenders), especially in camp situations and in advocacy towards UNHCR.**

71. **The Special Rapporteur recommends that national human rights institutions:**

(a) **Ensure that the situation of defenders of people on the move is fully included in the monitoring of the situation of human rights;**

(b) **Recognize publicly and support the role of defenders of people on the move.**

72. **The Special Rapporteur also recommends that regional and international organizations, including the Organization for Security and Cooperation in Europe, the Council of Europe, the Organization of American States, the African Union and the Association of Southeast Asian Nations develop and share existing good practices in regional organizations with regard to the normative development of the right to defend the rights of people on the move and the rights of people on the move themselves.**

73. **Special procedures for human rights defenders should more closely monitor the concerns of people on the move, including by better tracking the number of communications received about their concerns.**

74. **The Special Rapporteur recommends that civil society, including international and local non-governmental organizations, community-based organizations and private and State funders of civil society:**

(a) **Further explore, strengthen and expand the availability of temporary relocation initiatives, including both within the States of residence of human rights defenders at risk and internationally, through the sharing of good practices and the strengthening of support available for such schemes, which should follow the seven principles underpinning the protection of defenders (see A/HRC/31/55, para. 111), namely, that they are rights-based; inclusive of defenders from diverse backgrounds; gender-sensitive; based on a holistic understanding of security; oriented to the protection of individuals and collectives; involve the participation of defenders in the choice of protection measures; and are flexible, in order to meet the specific needs of defenders;**

(b) **Address the barriers to the continued activity of human rights defenders who become people on the move for which it is responsible by adopting non-**

discriminatory approaches to recruitment and welcoming human rights defenders who are people on the move and their organizations into local advocacy networks.

75. **The Special Rapporteur recommends that journalists, media organizations, bloggers, social media activists and other persons who express themselves through artistic means develop new tactics for reporting on the situation of defenders of people on the move that more fully recognize their vulnerabilities and realize their agency.**